UNITED NATIONS

A

General Assembly

Distr.
GENERAL

A/46/348/Add.1
1 October 1991
ENGLISH
ORIGINAL: ENGLISH/RUSSIAN

Forty-sixth session
Agenda item 133

# ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS

## Report of the Secretary-General

## Addendum

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## PHILIPPINES

[Original: English]

[3 July 1991]

1. The Philippines welcomes the initiative of Austria and Czechoslovakia in submitting the draft Additional Protocol, with the objective of more specifically and precisely defining the consular functions authorized by the Convention.

2. Within this context, the Philippines supports the general tenor of the draft of the Additional Protocol.

## UKRAINE

[Original: Russian]

1. Ukraine received with interest the proposal by Austria and Czechoslovakia concerning the elaboration of an additional protocol on consular functions to the Vienna Convention on Consular Relations of 1963. It represents a useful effort in the codification and progressive development of international law. At this time, when Ukraine is actively engaged in establishing direct consular relations with neighbouring and other States on the basis of its Independence Act of 24 August 1991, it will give very close attention to the elaboration of the draft additional protocol.

2. The Vienna Convention on Consular Relations does not contain an exhaustive list of specific consular functions. Article 73 of the Convention provides for the possibility of filling this lacuna in the law by means of bilateral consular agreements and the rules of customary international law. At the same time, it would seem advisable to study closely the question of the possible effectiveness of using a universal method to regulate problems which are not encompassed by the 1963 Convention, rather than by concluding bilateral agreements. The idea of the additional protocol is also important as a means of reducing recourse to customary law, which gives rise to complications. The additional protocol can also be viewed in the light of its usefulness as a general point of departure for States which do not have diplomatic, consular or trade relations.

3. The wording of the draft additional protocol takes into account the provisions of agreements and practices which affect consular functions. This is a point in its favour. Another positive feature is that its authors did not undertake to codify the entire range of international practice in the field of consular functions. The draft protocol affirms that customary international law should continue to govern questions not expressly regulated in its articles.

4. Certain provisions in the proposed document could enhance existing international practice. In particular, it appears that article 15, paragraph 1, of the draft has been more aptly formulated than article 35, paragraph 1 (b), of the Vienna Convention on Consular Relations. It contains at least two considerably improved provisions. The first of these concerns the notification of the arrest or other restriction of the personal freedom of a national. While the Convention provides for notification in the event that such a national should require it, under the protocol notification shall take place if the person concerned does not object against such notification. The second improvement in the paragraph in question is that it establishes a time-frame for the giving of notification. A period of, for example, four days should have been set for this. The draft could be supplemented with certain new provisions. In particular, it could indicate the powers of a consul with regard to matters of inheritance; it could regulate in greater detail the question of the freedom of communication between a consul and the nationals of the State he represents, including the consul's right to a mandatory meeting with his nationals, and it could include a provision on his obligation to issue visas within fixed, preferably shorter, time-limits.

5. At the same time it is important that the additonal protocol should not contain any provisions which would be prejudicial to the rights and obligations deriving from agreements already concluded between States and should not impede the conclusion of new agreements under international law.

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